

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KEVIN GREEN, JULIAN PEREZ,
NICK CIECHALSKI,

Plaintiffs,

Case No. 23-CV-01166 LJV (F)

v.

CITY OF BUFFALO,
BATTALION CHIEF RONALD K. BOURGEOIS,
COMMISSIONER WILLIAM RENALDO,
DEPUTY COMMISSION RAMO SUAREZ,
And MAYOR BRYON BROWN

Defendants.

DECLARATION OF JOSHUA B. LEVITT

Joshua B. Levitt declares under penalty of perjury that the following is true and correct in accordance with 28 U.S.C. § 1746:

1. I am an attorney with Hodgson Russ LLP. I submit this declaration in support of Defendants' motion to dismiss with respect to Plaintiff Nick Ciechalski for failure to appear at his deposition and refusing to verify his interrogatory responses.

Plaintiff Ciechalski's Deficient Interrogatory Responses

2. On May 17, 2024, Defendants served Defendants' First Set of Interrogatories to Plaintiff Nick Ciechalski. A copy of the certificate of service dated May 17, 2024 is attached as **Exhibit 1**.

3. Defendants' counsel emailed requesting responses on June 24, 2024, and having received no response, followed up again on July 19, 2024. A copy of those emails is attached as **Exhibit 2**.

4. On August 7, 2024, Plaintiffs' counsel requested an extension to August 28, 2024 to serve responses, to which Defendants' counsel agreed. A copy of those emails is attached as **Exhibit 3**.

5. On August 28, 2024, Plaintiffs' counsel requested an extension, advising that he had not reviewed the responses which his paralegal drafted. Defendants' counsel agreed to another short extension. A copy of those emails is attached as **Exhibit 4**.

6. On September 3, 2024, Plaintiffs' counsel served Plaintiff's Response to First Set of Interrogatories to Plaintiff Nick Ciechalski *with no signed verification*. A copy of Plaintiff Ciechalski's September 3, 2024 interrogatory response is attached as **Exhibit 5**.

7. On September 11, 2024, Defendants' counsel wrote a detailed email to Plaintiffs' counsel concerning gross deficiencies in Plaintiffs' discovery responses, including the fact that no verifications were provided. A copy of that email is attached as **Exhibit 6**.

8. Following a Meet and confer on September 16, 2024, Defendants' counsel followed up by email confirming Plaintiff's agreement to supplement the response by September 23, 2024. A copy of that email is attached as **Exhibit 7**.

9. On September 23, 2024, Plaintiffs' counsel served Plaintiff Ciechalski's Supplemental Response to First Set of Interrogatories. Plaintiff Ciechalski, however, provided ***no signed verification***. A copy of Plaintiff Ciechalski's September 23, 2024 supplemental response to interrogatories is attached as **Exhibit 8**.

10. On December 19, 2024, Defendants' counsel followed up about the lack of signed verification. A copy of that email is attached as **Exhibit 9**.

11. On December 20, 2024, Plaintiffs' counsel's paralegal stated that she followed up with Plaintiffs regarding the Verification pages and would provide them shortly. A copy of that email is attached as **Exhibit 10**.

12. On December 23, 2024, Defendants' counsel again followed up requesting a date by which signed verification pages would be provided. A copy of that email is attached as **Exhibit 11**.

13. On December 30, 2024, Defendants' counsel again followed up concerning Plaintiffs' failure to provide signed verification pages. A copy of that email is attached as **Exhibit 12**.

14. On January 3, 2025, Defendants' counsel again followed up, having received no response. A copy of that email is attached as **Exhibit 13**.

15. On January 6, 2025, Defendants' counsel again followed up, having received no response. A copy of that email is attached as **Exhibit 14**.

16. On February 10, 2025, Defendants' counsel again followed up, requesting signed verification pages. A copy of that email is attached as **Exhibit 15**.

17. On February 11, 2025, Defendants' counsel again followed up, requesting a signed verification page for Plaintiff Ciechalski. A copy of that email is attached as **Exhibit 16**.

18. To date, Defendants have not received a signed verification page from Plaintiff Ciechalski for his interrogatory responses.

Plaintiff Ciechalski's Failure to Appear for His Own Deposition

19. On January 17, 2025, Defendants' counsel emailed Plaintiffs' counsel proposing dates for party depositions, including Plaintiff Kevin Green on February 12, Nick Ciechalski on February 13, and Julian Perez on February 14. A copy of that email is attached as **Exhibit 17**.

20. On January 21, 2025, Defendants' counsel followed up on the proposed dates for depositions. A copy of that email is attached as **Exhibit 18**.

21. On January 21, 2025, Plaintiffs' counsel's paralegal responded, but did not provide Ciechalski's availability. A copy of that email is attached as **Exhibit 19**.

22. On January 22, 2025, Defendants' counsel followed up, requesting confirmation of proposed deposition dates. Plaintiffs' counsel's paralegal responded on January 22, 2025, but not did not confirm a date for Ciechalski's deposition. A copy of those emails is attached as **Exhibit 20**.

23. On January 27, 2025, Defendants' counsel followed up, requesting confirmation of the proposed date for Plaintiff Ciechalski's deposition. A copy of that email is attached as **Exhibit 21**.

24. On January 28, 2025, Plaintiffs' counsel's paralegal responded, stating that she had followed up with Mr. Ciechalski and will advise as soon as she receives a response. A copy of that email is attached as **Exhibit 22**.

25. On January 31, 2025, having not received any confirmation for Plaintiff Ciechalski, Defendants' counsel served a Second Amended Deposition Notice for Plaintiff Ciechalski for the previously proposed date and time: February 13, 2025 at 10:00 a.m. A copy of the Second Amended Deposition Notice is attached as **Exhibit 23**.

26. Defendants' counsel additionally emailed Plaintiffs' counsel: "Steve, we have noticed Mr. Ciechalski for February 13, 2025, as we previously proposed and will require him to appear then, unless the parties agree to another mutually amenable date. We proposed this date over two weeks ago and cannot longer wait any longer for Mr. Ciechalski to confirm his availability." A copy of that email is attached as **Exhibit 24**.

27. Plaintiffs' counsel never objected to the noticed date or time, and did not raise an issue until appearing for Plaintiff Green's deposition on February 12, 2025. At that time, Plaintiffs' counsel advised that his office had not been in contact with Mr. Ciechalski for over three months.

28. After Plaintiff Green's deposition on February 12, 2025, Plaintiffs' counsel's paralegal emailed Defendants' counsel: "Mr. Cohen asked that I advise that we haven't heard from our client with respect to depositions tomorrow. He never confirmed for us that he would be present for it. We just wanted you to be aware and Mr. Cohen plans to be available for the deposition if he does appear." A copy of that email is attached as **Exhibit 25**.

29. Plaintiffs' counsel emailed the morning of February 13, 2025, 30 minutes prior to Plaintiff Ciechalski's deposition: "Good morning Gentlemen. I have not heard from Nick, so I am not confident that he will be appearing. If he checks in with your receptionist, please call me [] or email me and I will come right down. Thank you." A copy of that email is attached as **Exhibit 26**.

30. Defendants' counsel, Deputy Commissioner Paul Eason, and a Court Reporter appeared as scheduled for deposition on February 13, 2025.

31. Neither Plaintiff Ciechalski, nor Plaintiffs' counsel appeared for Plaintiff Ciechalski's deposition on February 13, 2025. A copy of the transcript from that morning is attached as **Exhibit 27**.

32. Defendants have incurred significant time and expense as a direct result of Plaintiff Ciechalski's failure to provide signed verifications and appear for deposition. Defendants additionally continue to be prejudiced by Plaintiff Ciechalski's ongoing failure to cooperate in the discovery process.

WHEREFORE, Defendants respectfully request that the Court grant Defendants' motion to dismiss with respect to Plaintiff Ciechalski. Minimally, the Court should order Plaintiff Ciechalski's claims dismissed should he not appear for deposition on a date certain set by the Court. Additionally, the Court should award Defendants the expenses and reasonable attorneys fees incurred as a result of Plaintiff's failures.

Dated: February 21, 2025
Buffalo, New York

s/Joshua B. Levitt
Joshua B. Levitt